



SUPREME COURT OF NORWAY

On 10 April 2018, the Supreme Court gave judgment in

HR-2018-648-A (case no. 2017/1628), civil case, appeal against judgment.

Rutebileiernes Standardiseringsaksjeselskap

Norges Bilbransjeforbund (intervener)

(Counsel Fredrik Edvardsen)

v.

Kjell Asmund Akerholt

Norges Automobil-Forbund (intervener)

(Counsel Jens Christian Riege)

V O T I N G :

- (1) Justice **Webster**: The case concerns the question whether the buyer of a second-hand car can bring a claim of defect directly against the repair shop where the car had been serviced as agreed with the seller.
- (2) The deceased Harald Hovda had the timing belt replaced in his Suzuki passenger car in March 2011 at a repair shop associated with the corporation Rutebileiernes Standardiseringsaksjeselskap (RSA). Hovda's estate, represented by his widow, sold the car to Kjell Asmund Akerholt (Akerholt) in March 2014. The car broke down in March 2015 when a bolt in the timing belt was severed in two. It is undisputed that this was the cause of the breakdown.
- (3) Akerholt filed a complaint against RSA. RSA disputed liability after which Akerholt had the damage fixed at a different repair shop at a cost of NOK 77 154.
- (4) Akerholt brought the claim against RSA before the Consumer Disputes Board [*Forbrukertvistutvalget*]. On 20 January 2016, the Consumer Disputes Board concluded that RSA was liable to pay NOK 77 154 to Akerholt.
- (5) RSA then brought the case before Nordre Vestfold District Court. On 13 September 2016, the district court gave judgment in favour of RSA, concluding as follows:

1 Judgment is given in favour of Rutebileiernes Standardiseringsaksjeselskap in the claim for payment of NOK 77 154 – seventyseventhousandonehundredandfiftyfour.

- 2 **Kjell Asmund Akerholt is to pay costs of NOK 18 987.50 – eighteenthousandninehundredandeightyseven 50/00 to Rutebileiernes Standardiseringsaksjeselskap – within 2 – two – weeks of service of the judgment."**

- (6) The district court found that the Sale of Goods Act section 84 subsection 2 could not be interpreted to mean that the Consumer Purchases Act section 35 subsection 4 – on claims against a tradesperson who, as agreed with the seller or a prior sales stage, has performed work on the item concerned – applies accordingly in sales between private individuals.
- (7) Akerholt appealed the district court's judgment to Agder Court of Appeal. On 2 June 2017, the court of appeal gave judgment in favour of Akerholt, concluding as follows:
- "1. **Rutebileiernes Standardiseringsaksjeselskap AS is to pay NOK 77 154 – seventyseventhousandonehundredandfiftyfour – plus interest pursuant to the Act relating to Interest on Overdue Payments section 3 subsection 1 first sentence from 27 June 2015 and until payment is made, to Kjell Asmund Akerholt within 2 – two – weeks of service of the judgment.**
2. **Rutebileiernes Standardiseringsaksjeselskap AS is to pay costs in the court of appeal of NOK 82 350 - eightytwothousandthreehundredandfifty – within 2 – two – weeks of service of the judgment.**
3. **Rutebileiernes Standardiseringsaksjeselskap AS is to pay costs in the district court of NOK 19 281.50 – nineteenthousandtwohundredandeightyone 50/100 within 2 – two – weeks of service of the judgment."**
- (8) The court of appeal found that the work performed by the repair shop had been inadequate. The court of appeal found that the Sale of Goods Act section 84 subsection 2 must be interpreted to mean that the Consumer Purchases Act section 35 subsection 4 applies accordingly in a sale between private individuals.
- (9) RSA appealed the judgment of the court of appeal to the Supreme Court on the grounds of error in law as regards the right to bring direct claims. No appeal was made against the court of appeal's conclusion that the work of the repair shop was inadequate.
- (10) Before the Supreme Court, Norges Automobil-Forbund [Norwegian Automobile Association] has declared third-party intervention in favour of Akerholt. This intervention was permitted by the Supreme Court's Appeals Selection Committee in a decision of 25 January 2018.
- (11) Norges Bilbransjeforbund [Norwegian Motor Trade Association] has declared third-party intervention in favour of RSA. This intervention was permitted by the Supreme Court's Appeals Selection Committee in a decision of 26 January 2018.
- (12) In a new submission before the Supreme Court, Akerholt has invoked non-statutory background rules of law to defend his direct claim. Since the court of appeal's conclusion regarding the inadequacy of the repair work has not been appealed, the Supreme Court takes this into account. Apart from that, the case is the same as that before the court of appeal.

- (13) The appellant – *RSA* – with the support of *Norges Bilbransjeforbund* has briefly contended the following:
- (14) The Sale of Goods Act section 84 subsection 2 permits direct claims against prior sales stages, and not against other tradespersons. The reference to the Consumer Purchases Act section 35 is not generic and does not comprise subsection 4 on direct claims against a "tradesperson" who, in agreement with the seller or a prior sales stage, has performed work on the item. Hence, this provision is not applicable.
- (15) There is no basis for supplementing the Sale of Goods Act section 84 with non-statutory law. The provision gives a full account of the right to bring direct claims in sales between individuals. The Sale of Goods Act section 84 subsection 2 and the Consumer Purchases Act were adopted simultaneously, probably with the intention of making a complete set of rules. Judgments allowing direct claims are mostly based on specific transfer agreements and not on a general, non-statutory right. There has been no transfer of the claim between the seller and the buyer in the case at hand.
- (16) *RSA* and *Norges Bilbransjeforbund* have jointly submitted the following prayer for relief:
- "1. Judgment is to be given in favour of Rutebileiernes Standardiseringsaksjeselskap.**
 - 2. Rutebileiernes Standardiseringsaksjeselskap is to be awarded costs in all instances."**
- (17) The respondent – *Kjell Asmund Akerholt* – with the support of *Norges Automobil-Forbund* – has briefly contended the following:
- (18) The Sale of Goods Act section 84 subsection 2, together with the Consumer Purchases Act section 35, permits direct claims. The reference to the Consumer Purchases Act section 35 in the Sale of Goods Act section 84 subsection 2 must be deemed to concern the provision as a whole, so that direct claims can also be brought against tradespersons who have performed work on the item sold, and not only against professional sellers. The object considerations in preparatory works, legal theory and case law all support this interpretation of section 84.
- (19) In the alternative, the respondent has submitted that a claim can be brought directly against *RSA* on a non-statutory basis. Legislation and case law in adjacent legal fields indicate that this is a development towards permitting direct claims. Strong policy considerations also suggest that a direct claim is possible in our case.
- (20) *Kjell Asmund Akerholt* and *Norges Automobil-Forbund* have jointly submitted the following prayer for relief:
- "1. The appeal is to be dismissed.**
 - 2. Kjell Asmund Akerholt is to be awarded costs in the Supreme Court."**
- (21) *I have concluded that* the appeal must be dismissed.
- (22) If the inadequacy of the repair shop's work had been discovered while *Hovda* was the owner of the car, *Hovda* would have been able to bring a claim of defect against the repair

shop pursuant to the provisions in the Craftsman Services Act. The question in the case at hand is whether the new owner of the car, Akerholt, can bring a claim of defect directly against the repair shop without following the chain of contracts. If the chain of contracts must be followed, the claim would first have to be brought against Hovda's estate, which in turn could have brought the claim against the repair shop.

(23) The trade between Harald Hovda's estate and Kjell Asmund Akerholt was a sale between private individuals regulated by the Sale of Goods Act. The Consumer Purchases Act only applies when the seller is engaged in a commercial enterprise, see the Act's section 1 subsection 2.

(24) The Sale of Goods Act section 84 contains conditions for bringing actions against a prior sales stage. The provision, which is headed "Conditions for claiming against a prior sales stage", reads:

"(1) The buyer may as a consequence of a defect bring a claim against a prior sales stage if a corresponding claim on account of the defect can be brought by the seller.

(2) In sales between individuals when the purchase is not mainly associated with their commercial enterprise, the buyer may in any case bring a claim against a prior professional sales stage pursuant to the Consumer Purchases Act section 35."

(25) Subsection 1 concerns all transactions comprised by the Act, but regulates exclusively claims against *a prior sales stage*. It does not warrant a direct claim against the repair shop in the case at hand, because the transaction between the repair shop and Hovda was the rendering of a service, and not a sale.

(26) As a starting point, subsection 2 also covers claims against a prior sales stage, but regulates in particular "sales between individuals when the purchase is not mainly associated with their commercial enterprise". For the sake of simplicity, I will refer to these sales as sales between private individuals. With the reference to section 35, a private individual who has purchased from a private seller has certain rights under the Consumer Purchases Act.

(27) The Consumer Purchases Act section 35 is headed "Claims against a prior sales stage etc." The provision reads:

"The consumer may bring his or her claim of defect against the seller to a prior professional sales stage if a corresponding claim of defect may be brought by the seller or another party who acquired the item from the said prior sales stage.

Any agreement in a prior sales stage that restricts the rights of the seller or any other acquiring party cannot be applied to the consumer's claims pursuant to subsection 1 above to a greater extent than that which could be agreed between the consumer and the seller.

The provisions set out in section 27 with respect to complaints apply correspondingly to claims brought pursuant to this section.

The consumer may, at the same terms and conditions as in paragraphs 1-3 above, bring claims of defect to a tradesperson who, as agreed with the seller or a prior sales stage, has performed work on the item concerned.

The consumer may also bring claims under the Sale of Goods Act section 84 subsection 1 if this gives the consumer greater rights than those which follow from this section.

A prior sales stage may not set off their claims against the seller against the consumer's direct claim."

- (28) A main issue in the case at hand is whether the Sale of Goods Act section 84 only applies to claims against *prior professional sales stages*, or if the reference in subsection 2 means that the Consumer Purchases Act section 35 as a whole applies to sales between private individuals. In the latter case, it will be possible also in private sales to bring claims directly against *tradespersons* who have performed work on the item concerned, see section 35 subsection 4.
- (29) The wording and heading of the Sale of Goods Act section 84 suggest that the provision exclusively regulates direct claims against a prior sales stage. The Consumer Purchases Act section 35 also applies primarily to a prior sales stage. Hence, the reference in the Sale of Goods Act section 84 subsection 2 can be naturally read as a reference to the parts of the Consumer Purchases Act section 35 that concern claims against a prior sales stage, while the right in section 4 to bring claims directly against tradespersons who have performed work on the item is not comprised. But directly, the Sale of Goods Act section 84 only regulates claims against prior sales stages. It must thus be based on an antithetic interpretation, if one assumes that section 84 prevents direct claims against tradespersons who have performed work on the item. Such an antithetic interpretation is unproblematic if it can be demonstrated that this has been the legislature's intention. If not, it must be reconsidered.
- (30) Provisions on consumers' claims against prior sales stages were included in the Sale of Goods Act 1907 with an amendment in 1974. The then new section 49 gave a consumer buying an item from a tradesperson a right to bring a claim against the "seller's experts in preceding sales stages." The wording together with the preparatory works elucidates that the provision did not permit claims brought against other tradespersons than professional sellers, see Proposition to the Odelsting no. 25 (1973-1974) page 51.
- (31) The provision was continued and extended with the Sale of Goods Act 1988 section 84. Subsection 1 implemented the still applicable general right of buyers to bring claims of defect against prior sales stages. In subsections 2 and 3, the invariable rules for consumers were continued. It was also established that consumer sales were to be equal to consumer purchases, see the then section 84 subsection 2 second sentence. The following is stated regarding this extension in Proposition to the Odelsting no. 80 (1986-1987) item 3.11 on page 45:

"In the Ministry's view, the right to bring a claim against a prior sales stage should be extended to include private sales between consumers. It is reasonable that a consumer purchasing from another consumer has the same rights as a consumer who purchases from a professional seller. For the buyer, the least complicated is often to bring the claim against a prior sales stage. If the item has a defect, it may for instance be appropriate to bring the claim directly to the manufacturer.

However, the Ministry finds that it would also be reasonable to include a general right to bring claims against a prior sales stage, also when the buyer is not a consumer. This right would then have to be limited to prevent the buyer from enjoying more rights than the seller. For more information, please refer to NU 1984:5 p. 387."

- (32) The provision still only applied to prior professional sales stages.
- (33) In 2002, a separate Consumer Purchases Act was adopted incorporating the consumer provisions in the Sale of Goods Act 1988. The definition of a consumer purchase was discussed and the legislature found that the term should only comprise "sale of goods to a consumer when the seller or seller's representative is engaged in a commercial enterprise", see the Consumer Purchases Act section 1 subsection 2 and Norwegian Official Report (NOU) 1993: 27 Consumer Purchases Act item 2.2.6. Sales between private individuals were still regulated by the Sale of Goods Act.
- (34) The right to bring a claim against a prior sales stage was proposed continued in the Consumer Purchases Act, see NOU 1993: 27 Consumer Purchase Act, item 10.2 p. 102:

"The Committee finds that the provisions in the Sale of Goods Act 1988 on the consumer's right to claim remedy for breach against a prior sales stage should be continued in the Consumer Purchases Act. As pointed out above, these provisions are in turn based on the Sale of Goods Act 1907 section 49a.

Crucial in this regard is that there is no legitimate reason why the legal predecessor should be more protected against a claim from the consumer than if the claim had been brought by his own contracting party. At the same time, the buyer's rights are strengthened. When bringing a direct claim one would also avoid a post settlement between the seller and the legal predecessor.

The majority of the Committee ... proposes provisions that are fully based on the provisions in the Sale of Goods Act 1988 regulating consumers' claims against prior sales stages. Like under current law, the starting point should be a provision on direct claims, i.e. that the buyer may bring his or her *claim of defect* against a prior sales stage. ..."

- (35) The Consumer Purchase Board [*Forbrukerkjøpsutvalget*] also proposed a right to bring a claim directly against tradespersons who have performed work on the item or parts of it:

"The right to bring a claim against prior stages is currently limited to prior *sales* stages. However, it seems unjustified that only prior sellers are liable under the Consumer Purchase Act. The Board thus proposes that the same should apply for other tradespersons who have performed work on the item or on parts of it, see the draft section 42 subsection 4 [which became the Act's section 35 subsection 4] and the notes to this provision. If liability can only be asserted against a *tradesperson*, the provisions will only be applicable towards a person who is professional on par with a professional seller. The proposal appears to be a parallel to the provisions in the Craftsmen Services Act section 27 under which the consumer may bring a claim against both prior suppliers (sellers) and other tradespersons."

- (36) The Ministry endorsed the proposal, see Proposition to the Odelsting no. 44 (2001–2002) item 3.20.4.1, page 154:

"The Ministry endorses the Committee's proposal to extend the direct claim provisions to comprise any tradesperson who, in agreement with the seller or a prior sales stage, has performed work on the item or parts thereof – irrespective of whether this tradesperson is a seller. During the hearing, no objections have been made against such an extension."

- (37) It has not been discussed whether corresponding provisions should apply in sales between private individuals. On the other hand, the right in such events to bring a claim directly

against a prior professional sales stage was continued in the Sale of Goods Act section 84, see NOU 1993: 27 Consumer Purchase Act, chapter VII where these amendments are referred to on page 157:

"The amendment in section 84 has to do with the removal of the special provision on consumer purchase from the Sale of Goods Act 1988. Apart from that, it is set out in subsection 2 that the buyer, also when buying from a private individual may bring a claim against the seller's prior professional sales stage under the provisions in the Consumer Purchases Act. This provision is meant to replace the current second sentence in section 84 subsection 2, which uses the term "sales between consumers". In the Committee's view, it is unfortunate to juxtapose sales between private individuals with sales between consumers. It has been attempted to implement a more specific description of sales between individuals when the purchase is not mainly associated with their enterprise."

- (38) The Committee only discussed the right to bring claims directly against prior professional sales stages. Nothing suggests that the intention was also to implement a right to bring claims directly against other tradespersons. On the other hand, the preparatory works give no basis for assuming that the legislature, when making the direct claims provisions, intended to distinguish between prior professional sales stages and tradespersons who have performed work on the item concerned. It may seem as if the issue has been overlooked.
- (39) No Supreme Court case law exists to give guidance for the issue at hand. However, there are a number of rulings from other areas of law where the Supreme Court has found that contractual parties had a right to bring claims against prior stages in the chain of contracts. The results are partially based on considerations similar to transfer of contract, see for instance the ruling Rt-1976-1117 (*Siesta*) page 1122 and the majority's ruling in Rt-1981-445 (*Davanger*) page 451. The minority came to the same result, but based on non-statutory law. In Rt-1995-486 (*Nordland*), a direct claim was accepted, partially based on views on third party agreements.
- (40) This brings me to the question whether Akerholt's right to bring a direct claim derives from background law the way it has been reflected in Supreme Court case law. If so, it can be debated whether this entails an analogue application of section 84 subsection 2, or if background law supplements section 84 by a non-statutory right to bring a direct claim. I will not consider which approach to apply, as it will not influence my decision.
- (41) The appellant has submitted that non-statutory law cannot be applied when statutory provisions are so "finely stitched" and well considered. I agree that one should have been cautious about supplementing a relatively new provision such as the Sale of Goods Act section 84 if the legislature had expressed a clear solution at this very point. As mentioned, however, I cannot see that the legislature has expressed any view – the issue seems to have been overlooked.
- (42) In the preparatory works of the provision in the Sale of Goods Act 1907 section 49 a, which was incorporated in 1974, it was clearly stated that the provision was not to prevent further development of non-statutory provisions on direct claims, see Proposition to the Odelsting no. 25 (1973–1974) page 52:

"The Ministry will point out that even if section 49 a only comprises consumer purchase with a professional seller and claims of defect, the provision is not to be interpreted

antithetically in the sense that there is no possibility whatsoever of bringing a direct claim in other cases. The section does not address this issue..."

- (43) In the special motives on page 75, it is repeated that "[t]he provision proposed herewith cannot be interpreted antithetically in other purchases or other claims than those dealt with in the draft".
- (44) I have not found equally clear statements in the preparatory works of the subsequent amendments to the Sale of Goods Act. This may be due to the reduced need for background law since the legislation is becoming increasingly detailed. The issue thus loses its relevance. Yet, I cannot see that the legislature has abandoned the starting point that the non-statutory right to bring direct claims may be developed outside of the statutory framework.
- (45) The Supreme Court has also previously assumed that the right to bring direct claims applies in heavily regulated areas. In its ruling Rt-1995-486 (*Nordland*), a machine was damaged during transport. The transport had been ordered from a company, which in turn gave the assignment to a different company. The buyer of the machine did not have any agreement with this company. The Road Transportation Act contains provisions in chapter VII on "Transport performed by several carriers in succession", and the carrier held that since these provisions did not warrant direct claims, such a claim could not be brought. The Supreme Court found that comprehensive insurers could bring claims directly to the sub-carrier. The conditions in chapter VII were not met, but the Supreme Court found that the general provision on the carrier's liability in section 27 was applicable, despite this provision's primary goal being to distribute liability between the contractual parties. This can be compared to the definitions in the Maritime Code sections 251 and 321. Thus, the Supreme Court went far in establishing a right to bring direct claims in a heavily regulated area.
- (46) This is also how *Nordland* has been perceived in legal theory, see Viggo Hagstrøm, *Obligasjonsrett* [Law of obligations], 2nd edition 2011 page 827 and Amund Bjøranger Tørum, *Direktekrav* [Direct claims], 2007 page 314, emphasising that this shows the Supreme Court's reluctance to interpret statutory provisions on direct claims antithetically, and that it has "gone far in supplementing even 'finely stitched' statutory provisions."
- (47) In summary, I find that sources of law demonstrate that the Sale of Goods Act section 84 may be supplemented by non-statutory law.
- (48) When assessing whether to permit direct claims, the Supreme Court has highlighted whether the entity receiving the claim has a legitimate interest in opposing it, see for instance the rulings Rt-1981-445 (*Davanger*) page 451, and Rt-1976-1117 (*Siesta*) page 1122. It must be determined whether the entity to whom the claim is brought will suffer more consequences than what it had reason to expect when entering into the contract, see Rt-1998-656 (*Veidekke*) page 663. If the consequences would be the same, the absence of the risk of receiving a direct claim would entail an unjustified enrichment.
- (49) The concerns emphasised in case law are the same as those making basis for the provision in the Sale of Goods Act section 84 and the Consumer Purchases Act section 35, see NOU 1993: 27 Consumer Purchase Act, item 10.2, which I have already quoted. The Committee mentions that "the interests of the legal predecessor are not worthy of more

protection when the claim is brought by the consumer than if it had been brought by its own contractual party". In addition, it is emphasised that the buyer's position is strengthened and that post settlement between the seller and the legal predecessor is avoided.

- (50) In the same passage, the explanation of the proposed section 35 subsection 4 is that it would be "unjustified" to distinguish between prior professional sellers and tradespersons who have performed work on the item. My perception is that the Committee finds that the same considerations apply, and that this implies that the same provisions should apply for the two groups.
- (51) There are also other policy considerations. For private parties, it is an advantage if the claim can be brought against professional parties without acting through a private intermediary. For a private seller, handling such a claim may be burdensome and cause financial distress. Also, if direct claims are permitted, the liability can be placed where it should, which would save resources.
- (52) The policy considerations behind the right to bring claims directly against prior contractual parties are thus applicable in the same way and with the same strength to a private individual who purchased from another private individual, as to a consumer having purchased from a professional seller. There is also no reason to distinguish between direct claims against prior professional sales stages and direct claims against tradespersons who have performed work on the item sold.
- (53) This concurrence with the basic view of the legislature is also reflected through the solving of the issue in adjacent legislation.
- (54) Pursuant to the House Building Act section 37, the consumer may bring a claim against "a prior contractual party that has entered into the agreement for commercial purposes". The term prior contractual party will comprise both prior sales stages other tradespersons. The provision also applies to sales where the house has not been in use for more than one year, see the Alienation Act section 4-16 subsection 3, even though the seller is a private individual. In these cases, the section thus warrants direct claims against all prior contractual parties, also in sales between private parties.
- (55) Pursuant to the Alienation Act, the consumer may bring a claim of defect against "the prior seller or other prior contracting party", see section 4-16. The Alienation Act also applies to sales between private individuals and thus permits direct claims against other tradespersons in situations that are nearly parallel to that in the case at hand.
- (56) Direct claims are also permitted in the Craftsmen Services Act section 27 subsection 4. The provision gives the consumer a right to bring a claim against other tradespersons than prior sales stages. The Act does not regulate contracts between private individuals, but the provision adds to the overall impression that the law generally permits direct claims from private individuals against tradespersons in prior stages.
- (57) The situation at hand is similar to those where a direct claim is permitted by law. I cannot see that the repair shop has a legitimate interest in opposing the claim. Nor can I see that the repair shop will suffer greater financial consequences if the claim is permitted, than what it had to expect when agreeing to repair the car in the first place. It would constitute

an unreasonable enrichment if the repair shop were to evade liability for non-conformity because the car had been resold. Moreover, Akerholt's liberty to deal with the repair shop directly instead of encumbering the estate or the widow has intrinsic value.

- (58) Against this background, my conclusion is the same as that of the court of appeal, and the appeal must be dismissed.
- (59) Akerholt and Norges Automobil-Forbund have asked that costs in the Supreme Court be awarded to Akerholt. The costs amount to NOK 152 250 and are awarded pursuant to the Dispute Act section 20-2 subsection 1. Norges Bilbransjeforbund is liable on the same terms as Rutebileiernes Standardiseringsaksjeselskap, see the Dispute Act section 20-1 subsection 3.
- (60) I vote for this

J U D G M E N T :

1. The appeal is dismissed.
2. Rutebileiernes Standardiseringsaksjeselskap and Norges Bilbransjeforbund are jointly and severally to pay to Kjell Asmund Akerholt costs in the Supreme Court of NOK 152 250 – onehundredandfiftytwothousandtwohundredandfifty within 2 – two – weeks of service of the judgment.

- (61) Justice **Arntzen:** I agree with the justice delivering the leading opinion in all material aspects and with her conclusion.
- (62) Justice **Bergh:** Likeså.
- (63) Justice **Falch:** Likeså.
- (64) Justice **Indreberg:** Likeså.
- (65) Following the voting, the Supreme Court gave this

J U D G M E N T :

1. The appeal is dismissed.
2. Rutebileiernes Standardiseringsaksjeselskap and Norges Bilbransjeforbund are jointly and severally to pay to Kjell Asmund Akerholt costs in the Supreme Court of NOK 152 250 – onehundredandfiftytwothousandtwohundredandfifty within 2 – two – weeks of service of the judgment.